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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re T.J., a Person Coming
Under Juvenile Court Law.

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

T.J.,

Defendant and Appellant.

B288328

(Los Angeles County Super.
Ct. No. PJ48693)

APPEAL from an order of the Superior Court of Los Angeles County, Morton Rochman, Judge. Affirmed in part, modified in part.

Torres & Torres and Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Minor appeals from the juvenile court's judgment and disposition order committing minor to the Division of Juvenile Justice's (DJJ) custody. He argues the court abused its discretion when it ordered his DJJ commitment rather than a less restrictive alternative. He also contends the court erred in imposing conditions of probation on him. We conclude the court did not abuse its discretion in committing minor to the DJJ's custody. We strike the portion of the court's order imposing probation conditions as the court lacked authority to impose such conditions after committing minor to the DJJ.

FACTUAL AND PROCEDURAL BACKGROUND

1. Multiple Sexual Batteries on Minors in 2011

In 2011, when minor was thirteen years old, he committed multiple sex offenses. In September 2011, as an eighth grader, minor repeatedly grabbed the breasts and buttocks of two classmates in school hallways over a period of months. On December 5, 2011, the People filed a petition to declare minor a ward pursuant to Welfare and Institutions Code section 602.¹ The People alleged that minor committed two counts of misdemeanor sexual battery against his two classmates, in violation of Penal Code section 243.4, subdivision (e)(1), and two counts of simple battery on school property in violation of Penal Code section 243.2, subdivision (a). The petition was sustained on December 21, 2011, and on March 12, 2012, the juvenile court placed minor home on probation for a period of six months pursuant to section 654.2.

In February 2012, minor grabbed a woman in a bear hug and fondled her breasts, inner thighs, and vagina. On April 13,

¹ All subsequent statutory references are to the Welfare and Institutions Code unless indicated otherwise.

2012, the People filed a section 602 petition, alleging minor committed misdemeanor sexual battery by restraint, in violation of Penal Code section 243.4, subdivision (a). On May 3, 2012, the court found minor in violation and terminated his community detention.

On May 17, 2012, minor admitted the truth of the petitions filed December 5, 2011, and April 13, 2012. Minor was declared a ward of the court and ordered suitably placed. He was placed at Trinity Youth Services in Apple Valley (Trinity). The court calculated minor's maximum time to be 1 year 8 months, and that he was entitled to 30 days predisposition credit.

2. Minor's Violence and Disobedience in Placements

At Trinity, minor instigated fistfights, punched other residents in the genitals, was disrespectful to residents and staff, stole money from staff, failed school classes, habitually used profanity, exhibited gang behavior, and was removed on an emergency basis from one placement. On September 26, 2012, the People filed a notice of violation pursuant to section 777, alleging minor violated probation conditions that he obey authorities and satisfactorily attend school. The petition alleged minor stole \$105.00 from the purse of a staff member, and listed numerous other instances of "negative" and "aggressive" behavior. Minor was terminated from Trinity as an "emergency removal" because of his "overly aggressive/violent behavior" that threatened "the safety and security of all other residents." Minor admitted the violation, and the court ordered him to be placed at another camp.

However, minor sabotaged his placement interviews and was rejected from each potential facility. He remained in juvenile hall after being rejected by multiple treatment centers. On February 15, 2013, the trial court terminated minor's suitable placement, over the People's objection. The court placed minor at

home on probation and ordered him to attend an outpatient juvenile sex offender treatment program.

After a few months of being home, minor absconded from probation. On May 23, 2013, the juvenile court found minor was AWOL from home, his whereabouts unknown, and issued a bench warrant for his detention. In June 2013, minor's mother informed the probation officer that minor had not been attending the juvenile sex offender program.

On June 19, 2013, a section 777 petition was filed, alleging minor had violated the conditions of his release by failing to obey his parents and failing to participate in an outpatient juvenile sex offender treatment program. Minor admitted the truth of the petition. For a second time, the juvenile court ordered minor into camp community placement for six months.

After he was released from camp in January 2014, minor stopped attending school and left home. A section 777 petition, filed on April 2, 2014, alleged minor violated the terms of his release by being arrested for possessing tobacco, failing to satisfactorily attend school, disobeying his curfew and leaving home without permission. Minor admitted the allegations. On April 2, 2014, the juvenile court terminated the home on probation order and ordered minor to camp community placement for a third time.

3. Minor Brought a Knife to School and Committed a Lewd Act on a Child

On November 5, 2014, the juvenile court terminated the camp community placement order and ordered minor home on probation. Within weeks of his release to his parents' home, minor (who by then had become a known Pasadena Denver Lanes criminal street gang member) brought a knife to school on November 20, 2014, and was uncooperative when told to surrender it. The People filed a petition on December 22, 2014,

pursuant to section 602, alleging that minor possessed a knife on school grounds in violation of section 626.10, subdivision (a)(1).

Then, in December 2014, minor forced a 13-year-old girl to have sex with him. In a petition filed on March 3, 2015, the People charged minor with committing a lewd act on a person under 14, a felony, in violation of Penal Code section 288, subdivision (a). We observe that the probation report also indicates that in this time frame, another girl reported to police that minor and his friends raped her in order to “sex her in[to]” gang membership. However, that charge was not pursued when the victim failed to show up to a pre-filing interview at the district attorney’s office.

During this time period, minor informed the probation department that he had been looking into enrolling in the sexual offenders program but had not done so.

On April 3, 2015, minor admitted the allegations contained in both petitions regarding his possession of a knife on school property and committing a lewd act on a child. On that same date, the court ordered minor back to camp for five to seven months. The court calculated minor’s maximum time to be 8 years 8 months only as to these two petitions, and that he was entitled to 106 days predisposition credit.

4. Minor’s Continued Violation of Probation Conditions and Failure to Complete Sex Offender Treatment

Three months later, minor violated his probation by yelling at and physically assaulting probation officers, fighting with other residents, and creating late-night dorm disturbances. On July 24, 2015, the People filed a section 777 petition alleging minor: (1) assaulted a probation officer; (2) created a late-night disturbance; (3) yelled aggressive slurs towards a peace officer; (4) violated those same conditions when he was involved in a

gang related fight with another ward; (5) caused a late-night dorm disturbance; and (6) fought with another ward.

In late July 2015, the probation department recommended commitment to the DJJ because despite receiving mental health, substance abuse, anger management, and mentoring services over a four-month period at camp, then 17-year-old minor was “virtually oblivious to his conditions of probation, . . . highly impulsive, gang oriented[], assaultive[,] and highly antagonistic towards other wards and probation staff.” Minor’s probation officer further stated: “Despite counseling and progressive discipline, the ward has no respect for authority and his behavior is acutely destructive to the camp culture. Despite counseling from this officer, probation staff and mental health, the ward’s behavior continues to escalate towards more aggressive dysfunctional behavior.” The probation officer stated minor “would present a real danger to himself and to others in the community if released” and recommended ordering minor into DJJ custody.

The report stated that the camp did not provide sexual offender programs, but DJJ offered “nationally validated” sex offender programs for youths with a history of committing sexual abuse. The report urged that “this change of plan would vastly improve [minor’s] likelihood of rehabilitation, due to the fact that he would receive appropriate clinical treatment for a long history of sexual and behavioral problems.”

On November 18, 2015, minor admitted the allegations contained in the section 777 petition. On February 17, 2016, the juvenile court ordered minor to be placed in a residential program that had sex offender treatment. However, he was rejected from all five possible placements offering a sexual offender counseling program. On April 21, 2016, the court

ordered minor to enroll and participate in an adult 52-week sexual offender program.²

On May 19, 2016, the juvenile court terminated the suitable placement order and placed him home on probation, ordering him to continue the sexual offender counseling program. He did not continue the program, nor did he report to probation. In the seven months before he was arrested on a bench warrant, minor attended only one sexual offender counseling session.

5. Minor Ordered into DJJ Custody

On August 31, 2016, the People filed a section 777 petition and requested a bench warrant alleging that minor violated conditions of his probation by: moving from his residence and failing to make his whereabouts known, failing to attend school, and failing to participate in a sexual offender counseling program.

On March 24, 2017, minor was detained in juvenile hall.³ On May 26, 2017, the People filed a motion in favor of committing minor to the DJJ. This motion described minor's criminal acts, violent and defiant behavior, and failure to cooperate to obtain the sex offender treatment he needed. The motion explained that minor's last sustained petition for violation of Penal Code section 288, subdivision (a) made him eligible for commitment and that there were no factors disqualifying him from commitment. The motion explained: minor "is the ideal candidate for a commitment to [DJJ]. For the last five years, . . . he has made little to no, attempts to comply with his conditions of probation.

² Minor remained detained in juvenile hall during this period when the court was assessing placement options and trying to place him in a program with sex offender treatment.

³ While in juvenile hall, minor obtained his high school diploma.

He has violated probation approximately ten times and collected four petitions. Three of the four petitions allege sex crimes and show a clear pattern of increasingly violent sexual conduct against multiple victims.” The motion stated that he refused to complete sexual offender counseling despite being ordered by the court to do so.

On January 12, 2018, the juvenile court held a contested hearing on the section 777 petition. The court took judicial notice of the People’s motion for minor’s commitment to the DJJ. Minor’s probation officer testified to his efforts to find minor when minor absconded. The officer also testified that he repeatedly informed minor of his obligation to complete the sex offender counseling, and that minor failed to make an effort to complete the counseling. The court had first ordered minor to participate in a sexual offender counseling program in May 2012; the last time the court again ordered minor to complete the program was February 2016. The probation officer testified that minor’s maternal aunt’s home was a suitable placement prospect based on the review he conducted months prior to the hearing.

Minor’s mother testified on his behalf. She explained that the family was under financial stress, was evicted from their home following minor’s May 2016 placement home, and lived week to week in different hotels. She testified that minor lived with the family and took care of his younger siblings during the seven-month period he was on warrant status. She explained that the sex offender program would not waive the \$35 fee for each class and location for the classes was several miles from their home. She stated that she took minor to the sex offender classes five to six times, and they discussed what he learned following the class. The mother asked that minor be placed with her sister—his maternal aunt. Mother testified that mother would drive him to and pay for the sex offender classes.

The People argued that minor was a danger to the public if released without completing the sex offender treatment program. The People asserted that the court had “gone above and beyond exhausting all other efforts to rehabilitate” minor: “The court has given him five opportunities since 2012. Each time he violated probation. [He] was to continue in the . . . sexual offender program, to continue reporting, and the minor has not done that. [¶] The only option left is the Department of Juvenile Justice where he will receive all of the counseling as recommended in 2015 by [a psychiatrist].” The People pointed out that in the DJJ, minor would receive sexual impulsivity counseling, individual psychotherapy, anger management, substance abuse counseling, and gang diversion counseling. Minor’s counsel admitted minor needed rehabilitative psychological services, and argued for minor to be returned to a camp or other probation program.

The court found true all three counts in the section 777 petition. The court found the People’s argument well taken. On January 19, 2018, the court committed minor to the DJJ for a maximum period of 10 years. The court calculated that minor was entitled to 1,331 days of predisposition credit.

On February 8, 2018, minor filed his notice of appeal from the judgment and disposition.

DISCUSSION

Minor argues the court abused its discretion in committing him to the DJJ and erred in imposing probation conditions. We disagree with his first point and agree with his second.

1. The Court Did Not Abuse Its Discretion in Committing Minor to the DJJ’s Custody

We review for abuse of discretion the juvenile court’s decision to commit minor to the DJJ. (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 485.) We “indulge all reasonable inferences to support the decision of the juvenile court and will not disturb

its findings when there is substantial evidence to support them.” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330 [internal quotation marks omitted].) Commitment to the DJJ will be upheld “where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.) “ “In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law.” ’ ” (*In re Oscar A.* (2013) 217 Cal.App.4th 750, 756.)

One of the primary objectives of the juvenile court “is rehabilitation, and the statutory scheme contemplates a progressively more restrictive and punitive series of dispositions starting with home placement under supervision, and progressing to foster home placement, placement in a local treatment facility, and finally placement at the DJJ.” (*In re M.S., supra*, 174 Cal.App.4th at p. 1250.) In following the statutory scheme, however, “the court has broad discretion to choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public.” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.)

Here, ample evidence supported the trial court’s decision to commit minor to the DJJ. First, the evidence demonstrated that minor had failed to comply with probation terms repeatedly and that DJJ commitment was required to protect public safety. Second, the record also suggested that minor likely would benefit from commitment because he would likely receive the sex offender rehabilitative treatment he had failed to complete. Minor sabotaged placements at camps that could have provided counseling and failed to comply with court orders to attend counseling while at home. We cannot say the court abused its

discretion in concluding that commitment to the DJJ is necessary for minor to succeed in the sex offender counseling he requires.

Minor contends that the juvenile court failed to consider less restrictive alternatives before sending him to the DJJ. We disagree. Over the last seven years, the juvenile court not only considered but chose less restrictive alternatives, all to no avail. Several times, the juvenile court sent minor to camps or returned him to his mother's home, often over the People's objection. In committing minor to the DJJ, juvenile court reasonably found that less restrictive placements were ineffective especially in light of the increasing seriousness of minor's conduct. Minor asserts the court should have placed him in his aunt's home, where he could have attended out-patient classes (paid for by his mother). The juvenile court reasonably rejected this proposal based on evidence that established minor previously had the ability to attend out-patient classes paid for by his mother while living with his mother during the seven months he was AWOL, and failed to do so.

In a slight variation on other arguments, minor argues that his failure to complete sex offender counseling "is really the issue here." To characterize the issue in this manner minimizes the gravity of the problem. The evidence shows that minor has a history of defiant, aggressive, violent, and escalating sexual behavior. A December 2017 psychological evaluation placed minor in the highest category of risk for sexual offense recidivism (moderate-high with a score of 8+). The trial court reasonably found minor would not submit to treatment and that treatment in a more coercive atmosphere was necessary.

In sum, the juvenile court did not abuse its discretion in ordering minor into DJJ custody.

2. We Strike the Probation Conditions Imposed on Minor

Minor argues the court improperly imposed probation conditions after committing minor to the DJJ. The January 19, 2018 minute order states: “Minor remains on the same terms and conditions, deleting the restitution fund fine.”

The People concede and we agree the probation conditions were erroneously imposed. The “juvenile court loses the authority to impose conditions of probation once it commits a ward to [DJJ].” (*In re Edward C.* (2014) 223 Cal.App.4th 813, 829.) The “juvenile court’s imposition of discretionary conditions of probation constitutes an attempt to regulate or supervise the minor’s rehabilitation, a function solely in the hands of [DJJ] after the minor’s commitment.” (*In re Allen N.* (2000) 84 Cal.App.4th 513, 516.) We therefore strike the probation conditions from the court’s order.

DISPOSITION

The probation conditions imposed by the court in its January 19, 2018 dispositional order, committing minor to the DJJ’s custody, are stricken. As so modified, the judgment is affirmed.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.